

9 FAM 42.32(D)(11)

NOTES

(CT:VISA-2225; 11-24-2014)
(Office of Origin: CA/VO/L/R)

9 FAM 42.32(D)(11) N1 BACKGROUND

(CT:VISA-2161; 08-20-2014)

Section 1244 of Public Law 110-181, the National Defense Authorization Act for Fiscal Year 2008, as amended, authorizes special immigrant status (SQ1) for Iraqi nationals who have been employed by or on behalf of the U.S. Government in Iraq on or after March 20, 2003, and prior to September 30, 2013, for a period of not less than one year. Section 2 of Public Law 110-242 authorizes the Secretary of State or the Secretary of Homeland Security to convert an approved petition for special immigrant translator or interpreter (SI1) to SQ1 under section 1059 of Public Law 109-163, the National Defense Authorization Act for Fiscal Year 2006, with respect to which a visa is not immediately available to a petition for SQ1 status under section 1244 notwithstanding the qualification criteria for SQ1 status. Section 602(b) of Division F, Title VI, of the Omnibus Appropriations Act, 2009, as amended, Public Law 111-8, authorizes SQ1 for Afghan nationals who have been employed by or on behalf of the U.S. Government in Afghanistan on or after October 7, 2001, and prior to December 31, 2014, for a period of not less than one year.

9 FAM 42.32(D)(11) N2 WHO IS ELIGIBLE FOR SPECIAL IMMIGRANT STATUS (SQ1) UNDER SECTION 1244 OR SECTION 602(B)?

(CT:VISA-2225; 11-24-2014)

To obtain U.S. Citizenship and Immigration Services (USCIS) approval of a petition for special immigrant status (SQ1) under section 1244 of Public Law 110-181 or section 602(b) of Division F, Title VI, of Public Law 111-8, a self-petitioning alien must establish that he or she:

- (1) Is a national of Iraq or Afghanistan;
- (2) In the case of a national of Iraq: has been employed by, or on behalf of the U.S. *government* in Iraq, on or after March 20, 2003 *and prior to September 30, 2013*, for a period of not less than one year; in the case of a national of Afghanistan: has been employed by, or on behalf of the U.S.

UNCLASSIFIED (U)

government in Afghanistan, on or after October 7, 2001, and prior to *December 31, 2014*, for a period of not less than one year;

- (3) Has been determined by chief of mission (COM), Embassy Baghdad or Embassy Kabul, as applicable, or the COM's designee, to have provided faithful and valuable service to the U.S. *government*, which is documented in a positive recommendation from the alien's supervisor as defined in 9 FAM 42.23(d)(11) N4;
- (4) Has been determined by chief of mission, Embassy Baghdad or Embassy Kabul, as applicable, or the COM's designee, to have experienced, or to be experiencing, an ongoing serious threat as a consequence of the employment by or on behalf of the U.S. *government*;
- (5) Has cleared a background check and appropriate screening as determined by the Secretary of Homeland Security; and
- (6) Is otherwise eligible to receive an immigrant visa (IV) and is otherwise admissible to the United States for permanent residence, except that, in the determination of such admissibility, the grounds for inadmissibility specified in INA 212(a)(4) (8 U.S.C. 1182(a)(4)) relating to "public charge" shall not apply.

9 FAM 42.32(D)(11) N3 WHAT DOES "FAITHFUL AND VALUABLE SERVICE" MEAN?

(CT:VISA-2225; 11-24-2014)

- a. The COM, or his designee, must conduct an independent review of records maintained by the U.S. *government* or hiring organization or entity to confirm both employment for a period of not less than one year and "faithful and valuable" service.
- b. The COM, or his designee, has primary responsibility for determining whether the alien's service has been "faithful and valuable", based on documentation outlined in 9 FAM 42.32(d)(11) N2. This is separate from the supervisor's recommendation discussed in 9 FAM 42.32(d)(11) N4, although the supervisor's recommendation is an important document to assist in making this determination.
- c. 9 FAM 42.32(d)(2) N6.2, which discusses "faithful service" in the context of special immigrant classification under INA 101(a)(27)(D) (8 U.S.C. 1101(a)(27)(D)), notes that a record of disciplinary actions that have been taken against an employee does not automatically disqualify the employee. The COM, or his designee, must assess the gravity of the reasons for the disciplinary action and whether the record as a whole, notwithstanding the disciplinary actions, is one of faithful service. Remember, though, that aliens who qualify under INA 101(a)(27)(D) must have at least 15 years of service;

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 9
Visas

aliens may qualify under section 1244 or section 602(b) with only one year of service. It will generally therefore be more difficult for an employee to demonstrate faithful service over such a short period if the record reflects that disciplinary action has been taken against the employee.

9 FAM 42.32(D)(11) N4 WHO QUALIFIES AS A SUPERVISOR?

(CT:VISA-1171; 03-19-2009)

The supervisor should normally be the U.S. citizen who directly supervises the alien, or supervises the company for which the alien is employed. In all cases, before offering a recommendation for the employee for purposes of obtaining a Special Immigrant Visa (SIV) for the employee, the supervisor must have met the employee and must certify, in writing, that the referred applicant is personally known to the supervisor and, to the best of the supervisor's knowledge, presents no threat to the national security or safety of the United States. If it is not possible for a contract or subcontract employee to obtain this certification from a U.S. citizen supervisor, then post may accept a letter from a non-U.S. citizen supervisor, provided the U.S. citizen responsible for the contract or subcontract co-signs the letter and indicates that based on his or her relationship with the contract or subcontract supervisor, he or she is confident that the information provided is correct and also certifies that to the best of his or her knowledge, the employee presents no threat to the national security or safety of the United States. The recommendation must also contain the supervisor's e-mail address, and if the supervisor is not a U.S. citizen, the U.S. citizen's co-signer's e-mail address so he or she may be contacted if additional information is needed.

9 FAM 42.32(D)(11) N5 WHAT DOES "HAS EXPERIENCED OR IS EXPERIENCING AN ONGOING SERIOUS THREAT" MEAN?

(CT:VISA-2225; 11-24-2014)

- a. To qualify for a visa under section 1244 or section 602(b), an alien must have experienced, or be experiencing, an ongoing serious threat as a consequence of his or her employment by, or on behalf of, the U.S. Government. This determination must be made by the chief of mission, Embassy Baghdad or Embassy Kabul, as applicable, or the COM's designee (see 9 FAM 42.32(d)(11) N8 (a)(1)). Applicants must submit information relative to their particular circumstances to demonstrate that they are experiencing an ongoing serious threat, which may include statements from their employer, personal statements, or statements from community leaders. Conditions within the country itself may be indicative of a threat environment to which current or

former employees are subjected. The National Defense Authorization Act for FY 2014, signed on December 26, 2013, amended both section 1244 and section 602(b) by requiring consideration of a credible sworn statement depicting dangerous country conditions, together with official evidence of such country conditions from the U.S. *government*, as a factor in determinations of whether an alien has experienced, or is experiencing, an ongoing serious threat as a consequence of employment by, or on behalf of, the U.S. *government*.

- b. The chief of mission, or the COM's designee, is responsible for making the determination of whether an alien meets the statutory threat requirement. This determination should not be reassessed at the time of visa interview unless there is specific, substantial evidence that the alien misrepresented facts relative to the existence of a threat at the time of COM approval, in which case the consular officer should refer the case to the COM or COM designee for reconsideration of COM approval.

9 FAM 42.32(D)(11) N6 ARE THERE NUMERICAL LIMITATIONS ON VISA ISSUANCE?

(CT:VISA-2225; 11-24-2014)

- a. The total number of principal aliens of Iraqi nationality who could be provided special immigrant status (SQ1) under section 1244 was limited to 5,000 per year for FYs 2008 through 2012. Unused numbers from FY 2012 were allocated to FY 2013. Section 1 of Public Law 113-42 amended section 1244 by authorizing the issuance of SQ1 visas through December 31, 2013 in the amount of the total number of applications for SIV status by Iraqi principal applicants pending as of September 30, 2013 and for up to 2,000 additional visas for Iraqis who applied for status as principal applicants subsequent to that date. Section 1218 of the National Defense Authorization Act for FY 2014, Public Law 113-66, again amended section 1244 by authorizing the issuance of 2,500 SQ1 visas to Iraqi principal applicants beginning on January 1, 2014.
- b. The total number of principal aliens of Afghan nationality who could be provided SQ1 under section 602(b) was limited to 1,500 per year for FYs 2009 through 2013. Section 7034(o) of Division K, Title VII of Public Law 113-76 amended section 602(b) by authorizing the issuance of 3,000 visas to Afghan principal applicants in FY 2014 and allowing that any unissued visas from FY 2014 be allocated to FY 2015. Section 1 of Public Law 113-160, signed on August 8, 2014, further amended section 602(b) by authorizing the issuance of 1,000 additional visas to Afghan principal applicants by December 31, 2014.

9 FAM 42.32(D)(11) N7 ARE SPOUSES AND CHILDREN QUALIFIED?

(CT:VISA-2203; 10-16-2014)

- a. The derivative spouse and minor, unmarried children of the principal applicant may be included in the case and do not count against the cap of special immigrant visas (SQ1s) for that nationality each fiscal year. They may accompany the principal applicant or follow-to-join the principal.
- b. A spouse or child is also eligible if the principal alien had a petition approved by the Secretary of Homeland Security, but the petition was automatically revoked or terminated after its approval due to the death of the petitioning alien. In the case of a derivative spouse or minor who is otherwise qualified to receive a visa, post may continue to process the application without affirmative action by U.S. Citizenship and Immigration Services (USCIS) to reinstate the petition.

9 FAM 42.32(D)(11) N8 HOW ARE PETITIONS FILED?

(CT:VISA-2203; 10-16-2014)

- a. The elements below must be established by approval of the chief of mission, Embassy Baghdad or Embassy Kabul, as applicable, or the COM's designee before the petition can be forwarded to U.S. Citizenship and Immigration Services (USCIS):
 - (1) Assessment of the alien establishing that the alien has experienced, or is experiencing, an ongoing serious threat as a consequence of his or her employment by the U.S. government (see 9 FAM 42.32(d)(11) N5); and
 - (2) An independent review of records maintained by the U.S. government or the hiring organization or entity that confirms the alien's employment and faithful and valuable service to the U.S. government.
- b. Applicants must file the petition directly with the U.S. Citizenship and Immigration Services (USCIS) Nebraska Service Center for adjudication along with all required evidence. USCIS will contact the applicant directly should any questions or need for further documentation be required. Posts have no authority to adjudicate these petitions. The approved Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant will be sent through the National Visa Center (NVC) to designated posts for visa processing.
- c. Form I-360 petitions under section 1244 of Public Law 110-181 and section 602(b) of Public Law 111-8 may be filed by applicants via email and provisionally approved by USCIS. The applicant is instructed by USCIS in the approval notice for the petitioner to bring the signed original Form I-360 to the visa interview. The Bureau of Consular Affairs and USCIS signed a Memorandum of Understanding in January 2012 that consular officers would verify that petitioners have satisfied I-360 filing requirements at their visa interviews. At the visa interview, the consular officer must review the original

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 9
Visas

signed I-360, confirm that the signature is valid, and verify the petitioner's identity. Following the interview and on a monthly basis, Embassies Baghdad and Kabul should notify NVC via email of the case numbers and petition numbers for petitions where signatures have been verified and the petitioners have thus satisfied the I-360 filing requirements. NVC will notify the NSC by email about these petitions, and Embassies Baghdad and Kabul may continue processing of the SIV applications.

9 FAM 42.32(D)(11) N9 APPROVAL OF PETITION UNDER INA 204

(CT:VISA-2161; 08-20-2014)

The approval of a petition under INA 204 (8 U.S.C. 1154) is considered to establish prima facie entitlement to status, and the qualifications of the alien beneficiary are presumed to exist. Unless you have specific, substantial evidence of either misrepresentation in the petition process or facts unknown to USCIS at the time of petition approval or to the chief of mission, Embassy Baghdad or Embassy Kabul, as applicable, at the time of the approval described in 9 FAM 42.32(d)(11) N8 a, you generally would have no reason to return the petition to USCIS. If posts have further questions, contact the Post Operations Division (CA/VO/F/P).

9 FAM 42.32(D)(11) N10 IMMEDIATE INTENT TO IMMIGRATE

(CT:VISA-2225; 11-24-2014)

Special immigrant status (SQ1) was not designed for use as an "insurance policy" to protect an alien against the possibility of political or economic vicissitudes in the future. Nor was it the intent of Congress that the principal alien obtain SQ1 status solely to facilitate the entry of dependents into the United States when it is the principal alien's intent to return abroad to resume employment with the U.S. *government*. Visas issued under section 1244 or section 602(b) should have a maximum validity period of six months. Before issuing a visa, you must require that the applicant submit a letter indicating that he or she plans to resign the position he or she holds, plans to permanently separate from her or his position abroad, and intends to immigrate to the United States within the validity of the immigrant visa (IV). If the applicant does not intend to permanently resign his or her position and immigrate to the United States to reside, you should notify the COM or COM designee and request reconsideration of the COM approval. An applicant's failure to depart within the validity of the SIV is not prima facie evidence of lack of an ongoing serious threat or of misrepresentation to the COM. COM approval may be revoked if the applicant no longer meets the statutory

UNCLASSIFIED (U)

requirements of the program under section 1244, as amended, or section 602(b), as amended. In the event that COM approval is revoked, you should return the petition to USCIS for revocation.

9 FAM 42.32(D)(11) N11 SPECIAL PROVISIONS

(CT:VISA-2225; 11-24-2014)

- a. Section 1244(d) of Public Law 110-181 and section 602(b)(4) of Division F, Title VI, of Public Law 111-8 provide that neither the Secretary of State nor the Secretary of Homeland Security may charge an alien who meets the criteria in 9 FAM 42.32(d)(11) N2 any U.S. *government* fee in connection with an application for, or issuance of, a special immigrant visa (SIV). Note that an alien whose SIV status is based on conversion of a petition from SI1 to SQ1 status (see 9 FAM 42.32(d)(11) N13) must pay such fees.
- b. Section 1244(d) and section 602(b)(4) further provide that the Secretary of State must make a reasonable effort to ensure that aliens who are issued SIVs under either section 1244 or section 602(b) are provided with the appropriate series Iraqi or Afghan passport, as applicable, necessary to enter the United States. Posts are reminded of the waiver provisions of 22 CFR 42.2(g), and are encouraged to contact CA/VO/F/P if it is not practical for an applicant to await passport issuance.

9 FAM 42.32(D)(11) N12 REPRESENTATION

(CT:VISA-2203; 10-16-2014)

- a. The National Defense Authorization Act for FY 2014, signed on December 26, 2013, altered the Iraqi and Afghan SIV programs by allowing representation. Section 1244 of Public Law 110-181, the National Defense Authorization Act for Fiscal Year 2008, as amended, and section 602(b) of Division F, Title VI, of the Omnibus Appropriations Act, 2009, as amended, Public Law 111-8, authorize Iraqi and Afghan SQ applicants to have attorneys or other accredited representatives present during all interviews and examinations throughout the SIV process, including the COM application process. Any such representation is not to be at U.S. government expense.
- b. Posts should establish policies for allowing attorneys/representatives of SQ applicants access to waiting rooms to be present during interviews, taking into consideration such factors as a particular post's physical layout and any space limitations or special security concerns. Posts should not accede to requests for remote representation by attorneys or representatives via video or teleconferencing.
- c. During visa interviews, an attorney's or representative's presence does not have any impact on the applicant's obligation to respond to questions. The

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 9

Visas

applicant, not the attorney/representative, must answer all of the questions. The attorney/representative can ask the consular officer to clarify a confusing question prior to the applicant answering the question, but the consular officer has discretion to rephrase a question or to ask the applicant to answer the original question. The attorney/representative should not instruct the applicant not to answer a question, except on the narrow ground of protecting attorney-client privilege if the applicant is represented by an attorney. The consular officer should not ask the applicant what he/she discussed with his/her attorney prior to coming to the interview. Failure to provide requested information could warrant a 221(g) refusal. Consular officers need not allow applicants to consult with the attorney/representative before answering a question during the interview, except where the attorney wishes to advise his client on a point of law. After providing an initial and full answer to the best of his/her knowledge, the applicant may then consult with his/her representative and provide follow up information or clarification. The applicant and his/her representative do not need to be given a private location to consult. If the information provided after a consultation with the attorney/representative contradicts the information provided in the initial response, the consular officer should exercise his/her best judgment in weighing the credibility of the response as he/she would in other situations.

- d. When handling correspondence, as with any visa case where the applicant has elected to use an attorney or other accredited representative, you must be satisfied that an attorney-client relationship exists or that there is a comparable relationship with a non-attorney representative as outlined in 9 FAM 40.4 N12. For COM applications where the applicant has elected to use an attorney or other representative, the NVC will ensure that form G-28 or other documentary evidence of the attorney-client relationship or comparable relationship with a non-attorney representative is included in its transmittals to Embassies Baghdad and Kabul.

9 FAM 42.32(D)(11) N13 CASES CONVERTED FROM SPECIAL IMMIGRANT TRANSLATOR OR INTERPRETER (SI1) TO SPECIAL IMMIGRANT STATUS (SQ1)

(CT:VISA-2225; 11-24-2014)

You may encounter a visa application for a principal alien whose approved petition for SI1 status under section 1059 of Public Law 109-163, as amended, has been converted to an approved petition for SQ1 status under section 1244 of Public Law 110-181, as amended. In authorizing the conversion of these petitions when a visa is not immediately available with respect to SI1 status, Congress exempted the self-petitioning alien from the qualification requirements for SQ1 status other

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 9

Visas

than the numerical limitations. In reviewing the qualifications of a principal alien whose petition has been converted from SI1 to SQ1, you must consider the criteria outlined in 9 FAM 42.32(d)(10) N2, not those found in 9 FAM 42.32(d)(11) N2, to the extent that they differ. Unless you have specific, substantial evidence of either misrepresentation in the petition process or facts unknown to USCIS at the time of petition approval indicating that the alien does not meet the criteria for SI1 status listed in 9 FAM 42.32(d)(10) N2, you generally would have no reason to return the petition to USCIS. Note that, in the case of a national of Afghanistan whose petition has been converted from SI1 to SQ1 status, you may not return the petition to USCIS based only on a lack of Iraqi nationality or citizenship since Afghan nationality is a qualification ground listed in 9 FAM 42.32(d)(10) N2. The conversion provision did not authorize a fee waiver. An individual whose case is converted from 1059 to 1244 must pay all required fees. SQ1 visas issued in converted cases are to be valid for *a maximum of* six months.